

**TAMARA ENDERUD**  
Claimant

**GORDON-PIATT ENERGY GROUP**  
Respondent

**INDEMNITY INS. CO. OF NORTH AMERICA**  
Insurance Carrier

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The Administrative Law Judge originally decided this matter on May 15, 2000, when claimant was awarded temporary benefits only, with no permanent disability compensation. The matter was appealed to the Board. In its July 9, 2001, award, the Board modified the Administrative Law Judge's Award, finding claimant entitled to a 55 percent permanent partial disability to the body as a whole and awarding claimant \$70,622.93.

As of the date of the Board's decision, claimant was entitled to a lump sum of \$37,609.75 as past due permanent partial disability compensation over and above the previously paid \$4,718.24 in temporary total disability compensation.

No appeal was taken from the Board's Order, therefore, making the award final as of August 8, 2001, 30 days after the decision was rendered pursuant to K.S.A. 1998 Supp. 44-556(a).

On August 10, 2001, claimant served a demand letter on respondent pursuant to K.S.A. 44-512a (Furse 1993) requesting payment for the past due permanent partial disability compensation ordered by the Board. K.S.A. 44-512a (Furse 1993) requires that payment be made within 20 days from the date of service of the written demand. Failure to do so subjects the respondent and/or its insurance carrier to liability in the amount of not more than \$100 per week for any week that compensation is past due.

It was stipulated by the parties that respondent made payment in full on September 5, 2001. The 20-day time limit contained in K.S.A. 44-512a (Furse 1993) ran as of August 30, 2001. Therefore, respondent's payment of the amount due and owing was late and in violation of K.S.A. 44-512a (Furse 1993).

K.S.A. 44-512a (Furse 1993) states "the employee shall be entitled to a civil penalty . . . ."

The Board acknowledges that, while the penalty provision is mandatory from the language of K.S.A. 44-512a (Furse 1993), the amount of penalty is at the discretion of the fact-finder, being limited to not more than \$100 per week for each week the disability compensation is past due. In this instance, the Board's decision was final as of August 8, 2001. September 5, 2001, is exactly 4 weeks after the decision became final. "The date on which compensation is past due for the purposes of K.S.A. 44-512a is to be measured from the date an award is entered . . . ." Stout v. Stixon Petroleum, 17 Kan. App. 2d 195, 836 P.2d 1185, *rev. denied* 251 Kan. 942 (1992).

In this instance, the Appeals Board finds claimant is entitled to a penalty of \$100 per week for each week in which compensation was past due. Respondent did not pay the award when it was due. Additionally, respondent took no action during the 20 days subsequent to being served with the K.S.A. 44-512a (Furse 1993) demand letter on August 10, 2001. This totals 52 days from the date of the Board's decision during which respondent could have paid the award and avoided the penalty. Respondent's excuse is that the Board's Order of July 9, 2001, caught the insurance carrier by surprise. The Board concludes that respondent should have been capable of overcoming this surprise in less than 52 days and should have fulfilled its obligation as required by the statute. The Appeals Board finds claimant entitled to a penalty of \$100 for each week respondent was late in making payment of the amounts due and owing.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated September 13, 2001, should be, and is hereby, reversed in part, and claimant is granted a penalty from respondent in the amount of \$400 due to respondent's failure to timely pay the amounts due and owing from the Board's July 9, 2001, Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant  
Vincent A. Burnett, Attorney for Respondent  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director